

### § 7.37

the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The EEOC Administrative Judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the EEOC Administrative Judge shall exclude irrelevant or repetitious evidence. The EEOC Administrative Judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing Complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an EEOC Administrative Judge, or who otherwise engages in improper conduct.

(3) *Record of hearing.* The hearing shall be recorded and the Department shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the EEOC Administrative Judge at the hearing shall be made part of the record of the hearing. If the Department submits a document that is accepted, the Department shall furnish a copy of the document to the Complainant. If the Complainant submits a document that is accepted, the EEOC Administrative Judge shall make the document available to the Department representative for reproduction.

#### § 7.37 Final action.

(a) *Department final decision without a hearing.* The Director of EEO shall make the final decision for the Department based on the record developed through the processing of the complaint. The Director of EEO may consult with the General Counsel, the Assistant Secretary of Administration, the Office of Human Resources, the EEO Officer, the DCM, the EEO Counselor, other managers and supervisors, all designees and comparables, and all other persons the Director of EEO deems necessary. The decision, where appropriate, shall include the remedial and corrective action necessary to ensure that the Department is in compliance with the EEO statutes and to pro-

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mote the Department's policy of equal employment opportunity. When the Department dismisses an entire complaint under 29 CFR 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under 29 CFR 1614.108(f), the Department shall take final action by issuing a final decision. The final decision shall consist of findings by the Department on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with 29 CFR part 1614, subpart E. The Department shall issue the final decision within 60 days of receiving notification that a Complainant has requested an immediate decision from the Department, or within 60 days of the end of the 30-day period for the Complainant to request a hearing or an immediate final decision where the Complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of the Notice of Appeal Petition (EEOC Form 573) shall be attached to the final action.

(b) *Department final order after decision by EEOC Administrative Judge.* When an EEOC Administrative Judge has issued a decision under 29 CFR 1614.109 (b), (g) or (i), the Department shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the EEOC Administrative Judge's decision. The final order shall notify the Complainant whether or not the Department will fully implement the decision of the EEOC Administrative Judge and shall contain notice of the Complainant's right to appeal to the EEOC, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the EEOC Administrative Judge,

then the Department shall simultaneously file an appeal in accordance with 29 CFR 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(c) *Decision and final order by EEOC Administrative Judge after hearing.* Unless the EEOC Administrative Judge makes a written determination that good cause exists for extending the time for issuing a decision, an EEOC Administrative Judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the EEOC Administrative Judge of the complaint file from the Department. The EEOC Administrative Judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If the Department does not issue a final order within 40 days of receipt of the EEOC Administrative Judge's decision in accordance with 29 CFR 1614.110, then the decision of the EEOC Administrative Judge shall become the final action of the Department.

(d) *Decision and final order by EEOC Administrative Judge without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the EEOC Administrative Judge, file a statement with the EEOC Administrative Judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in 29 CFR 1614.109(g)(1). The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the EEOC Administrative Judge may order that discovery be permitted on the fact or facts involved,

limit the hearing to the issues remaining in dispute, issue a decision without a hearing or make such other ruling as is appropriate.

(3) If the EEOC Administrative Judge determines that some or all facts are not in genuine dispute, the EEOC Administrative Judge may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

#### § 7.38 Appeals.

(a) *Appeals to the EEOC.* (1) A Complainant may appeal the Department's final action or dismissal of a complaint. The regulations at 29 CFR part 1614, subpart D, govern a Complainant's right of appeal.

(2) The Department may appeal as provided in 29 CFR 1614.110(a).

(3) A class agent or the Department may appeal an EEOC Administrative Judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Department may appeal a final decision on a petition pursuant to 29 CFR 1614.204(g)(4).

(b) *Time limits for appeals to the EEOC.* Appeals described in 29 CFR 1614.401 (a) and (c) must be filed within 30 days of Complainant's receipt of the dismissal, final action or decision, or within 30 days of receipt by the attorney of record, if represented. Appeals described in 29 CFR 1614.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a Complainant has notified the Director of EEO of alleged noncompliance with a settlement agreement in accordance with 29 CFR 1614.504, the Complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Department's determination.

(c) *How to appeal.* (1) The Complainant, the Department, a class agent, grievant or individual class claimant (referred to elsewhere in this part as the appellant) must file an appeal with